R

v

NJ

Court of Appeal Criminal Division

[2019] EWCA Crim 997

Before: Lord Justice Gross Mr Justice Goose The Recorder of Greenwich His Honour Judge Kinch QC (Sitting as a Judge of the CACD)

Friday 12 April 2019

Representation

Mr P Dennis appeared on behalf of the Appellant.
Miss S Ellis appeared on behalf of the Crown.

Judgment

The Recorder:

1. The provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999 are engaged in this case. Directions were made in the Crown Court restricting publicity in respect of a complainant under the age of 18. No matter relating to that youth may be published that would identify them, including their name, address, any educational establishment or any workplace they attend, or any picture of them. This order lasts until they reach the age of 18.

2. On 26 October 2018 this appellant was acquitted of 11 counts alleging offences of rape and other sexual offending. On the same day he was, upon the application of the Crown, made subject to an indefinite restraining order after acquittal, pursuant to section 5A of the Protection From Harassment Act 1997 . He now appeals against that order with leave of the single judge. Leave was limited to the making of the restraining order in respect of two of its subjects and the indefinite length of the order.

The facts

3. At the material times the appellant lived with SJ, who was the complainant's mother. The appellant had two older children of his own, J, born in 2001, and S, born in. Between 2006 and 2010 the appellant and SJ had four other children together.

4. The details of the allegations of which the appellant was acquitted do not require any recitation here. However, certain aspects of his behaviour are material. When the allegations were passed to the police and officers attended the matrimonial home to arrest the appellant on 20 April 2018, he became aggressive and abusive. He continued that behaviour towards officers at the police station. He then refused to come out of his cell to be interviewed. He was later released on bail on condition that he did not contact SJ or any of the children and that he did not attend the family home. The prosecution alleged that he breached those conditions by going back to the family home on 20 April and then again on 25 April. Throughout the proceedings he maintained an aggressive attitude towards SJ, asserting in interview that she had behaved as a 'bitch', was horrible to him and that she had poisoned the other children.

5. Evidence supporting his aggression and abusive and intimidating behaviour was given by a social worker. The appellant himself accepted in evidence that he was aggressive and reacted badly to authority. He made clear his animosity towards SJ. While the jury were in retirement, he was permitted to address the judge in the absence of the jury. He made allegations against SJ of a sort of child abuse claiming that the children were not safe in her care.

6. The appellant was born in 1963. He is now 56 years old. He had one previous court appearance in 2002, being conditionally discharged for two offences of possessing a bladed article.

The restraining order

7. The Recorder had presided over the trial and had the opportunity to assess the appellant over a period of five days. He was sure in his conclusion that the appellant was unstable, confrontational and controlling. He was sure that the appellant had breached his bail on the two occasions in April. He observed that the appellant had been permitted to address the court the day before the verdicts in the absence of the jury and described his speech then as a 'tirade' in which he insisted that all the children be removed from SJ's care. So overwrought had he become that he declined to come to court the next morning over that issue. Overall, the Recorder was quite sure it was necessary to protect the individuals named in the order from harassment from the defendant. The order would remain in force until further order. He observed that the appellant could apply to discharge it at any time.

8. The order prohibited the appellant from:

(1) Entering the road where the matrimonial home was located (we have heard today that that aspect of the order has fallen away, in as much as SJ and the children of the family have relocated to another house and the appellant is now residing again in the former matrimonial home, following an unopposed variation application at the Crown Court.

(2) He was prohibited from contacting SJ, the complainant and two other named children.

(3) He was prohibited from contacting his own two children, J and S, or the four children he shared with SJ, save for supervised contact approved by the social services or family court.

Our assessment

9. It was conceded on behalf of the appellant that his behaviour before and at trial entitled the judge to impose a restraining order. Leave had been granted only in relation to two arguable criticisms of the wording of the order. The first criticism made is that the third prohibition should not have extended to his two older children who were not the biological children of SJ. It is also submitted that the duration of the restraining order was excessive and it should not have been made without limit of time.

10. No complaint can be made as to the Recorder's assessment and conclusion that a restraining order was made necessary by the appellant's behaviour in this case. The Recorder was uniquely well placed in that regard, having the opportunity to observe the appellant's behaviour at first-hand over the five days of the trial and there was ample material from which he could conclude that it was necessary to keep the appellant away from the former matrimonial home and from the children who lived there, forming a family unit with SJ at its head.

11. We agree with the single judge that the area of debate in terms of the reach of the order revolves around whether there was an established need to protect his children, J and S, aged now 17 and 15, and as to the necessary extent of the order. Having heard the measured submissions both from Mr Dennis for the appellant and from Miss Ellis on behalf of the Crown, we have concluded that this is a case where there is a continuing need for the protection provided by a restraining order and that it should continue, but for a fixed period. Our conclusion is that a term of six years will provide sufficient assurance against the emotional volatility engendered by the history of the case, in order to ensure that the situation has time to resolve. So far as the terms of the order are concerned, we agree with the judge's approach that it is necessary for all the children to be protected.

12. We would add this. We are concerned that once any child has reached the age of 18, Social Services interest and involvement is likely to fall away. While the children remain under the age of 18, the protection for the appellant is that he can seek supervised contact with the approval of Social Services. In respect of a child who has reached the age of 18, given that Social Services are unlikely then to have any continuing involvement, our view is that the protection for the appellant will be that if he seeks then to have contact with one of his children who has reached the age of 18 he ought to be able to apply for a variation. We would invite the parties to agree between them what variation may be required to the third prohibition of the restraining order and if possible to submit an agreed variation which can be submitted to the court by 12 noon on Monday, if it is not possible to do it by the end of business today.

Lord Justice Gross:

13. Mr Dennis, Miss Ellis, we hope that is clear enough. Please agree the terms and send us a draft, ideally to the clerk to Goose J, and we will take it from there.

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